

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NOE SERRANO LEON,

Movant-Petitioner,

v.

No. CV 14-0521 LH/KBM

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court *sua sponte*. Petitioner filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, even though this Court's docket indicates no criminal proceeding under his name. The motion challenges certain New Mexico state criminal convictions. By order entered on June 2, 2014, the Court notified Petitioner that he could voluntarily dismiss his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence or submit a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus. Petitioner has not responded to the order. Because Petitioner may seek relief only under § 2254, the Court will recharacterize his motion as a § 2254 petition. Under rule 4 of the Rules Governing Section 2254 Cases, the Court will order an answer.

IT IS THEREFORE ORDERED that Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence is recharacterized and construed as a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus;

IT IS FURTHER ORDERED that the Clerk is directed to modify the docket to indicate Petitioner's Warden and the New Mexico Attorney General as Respondents, and to forward copies

of this Order and the petition to both Respondents;

IT IS FURTHER ORDERED that Respondents answer the petition within thirty (30) days from entry of this Order. Respondents' answer shall advise, but is not limited to, whether the Petitioner has exhausted his state court remedies as to the issues raised in the federal petition. Respondents shall attach to the answer copies of any pleading pertinent to the issue of exhaustion which was filed by Petitioner in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondents shall also attach to the answer copies of all state court findings and conclusions, docketing statements, and opinions issued in Petitioner's state court post-conviction or appellate proceedings. The answer must describe the procedural history of each claim that Respondents contend is unexhausted and identify the State procedures currently available to Petitioner.



UNITED STATES CHIEF MAGISTRATE JUDGE